



0000-0000-0002-6690

Document Control Sheet

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# CERTIFIED MAIL RECEIPT CARD ("Green Card")

Division / Region:	OLS	Section:	Litigation	<b>RECEIVED</b> APR 02 2014 TCEQ CENTRAL FILE ROOM
Record Series:	IHW	Acct/RN No.	No RN#	
Secondary ID:	F0074/CO/20010522/Notification of Failure of Remediation			
Facility:	McKinney Metals, Inc. dba McKinney Metals Corp.			
Document Date:	05/22/2001	TCEQ Docket No.:	1997-0364-IHW-E	
Regarding:	Notification if Failure of Remediation			

## Affix Acknowledgment Receipt ("Green Card")

<b>SENDER:</b> ■ Complete items 1 and/or 2 for additional services. ■ Complete items 3, 4a, and 4b. ■ Print your name and address on the reverse of this form so that we can return this card to you. ■ Attach this form to the front of the mailpiece, or on the back if space does not permit. ■ Write "Return Receipt Requested" on the mailpiece below the article number. ■ The Return Receipt will show to whom the article was delivered and the date delivered.	I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.		
	3. Article Addressed to: Benjamin Smith McKinney Smelting Inc. 300 N. McDonald P.O. Box 274 McKinney, TX 75069	4a. Article Number 7000-0520-0023-4087	Thank you for using Return Receipt Service.
		4b. Service Type <input type="checkbox"/> Registered <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Insured <input type="checkbox"/> COD	
	5. Received By: (Print Name) 6. Signature: (Addressee or Agent) X	7. Date of Delivery 8. Addressee's Address (Only if requested and fee is paid)	

102595-98-B-0229 Domestic Return Receipt

Robert J. Huston, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
John M. Baker, *Commissioner*  
Jeffrey A. Saitas, *Executive Director*



## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

*Protecting Texas by Reducing and Preventing Pollution*

May 22, 2001

By Certified Mail No. 7000-0520-0023-4087-6831 and First Class U.S. Mail  
Mr. Benjamin Smith, President  
McKinney Smelting, Inc.  
300 N. McDonald  
P.O. Box 274  
McKinney, Texas 75069

**Re: Notification of Failure of Remediation; McKinney Smelting, Inc., TNRCC ID No. F0074,  
Enforcement ID. No. 10161; Docket No. 97-0364-IHW-E**

Dear Mr. Smith:

This letter serves as written notification pursuant to Ordering Provision 2.b. of Agreed Order, Docket No. 97-0364-IHW-E issued on December 2, 1998 by the Texas Natural Resource Conservation Commission ("TNRCC") requiring certain actions of McKinney Smelting, Inc. The Order imposes binding duties and responsibilities on McKinney Smelting, Inc. to remediate the Former McKinney Metals facility (the "Facility"), if Ferex fails to remediate the contamination according to the 1998 Compliance Agreement between Ferex Corporation and the TNRCC. The Executive Director has determined that Ferex has failed to remediate the contamination at the Facility. Therefore, pursuant to the Agreed Order, responsibility for the remaining remediation demonstration reverts back to McKinney Smelting, Inc.

Under the Agreed Order and Compliance Agreement, McKinney is responsible for remediation of the site under the Texas Risk Reduction Rules (30 TEX. ADMIN. CODE ch. 335) or the Texas Risk Reduction Program ("TRRP") (30 TEX. ADMIN. CODE ch. 350).

After failed attempts to achieve compliance with the Texas Risk Reduction Rules, Roy F. Weston, Inc. (representing Ferex Corporation, now Phoenix Metals), by letter dated September 28, 2000, elected to pursue the remediation under TRRP pursuant to 30 TEX. ADMIN. CODE ch. 335.8. Weston's September 28, 2000 letter again specified proposed activities for remediation under TRRP rules. In response to the Weston letter, the TNRCC identified assessment and response action deficiencies that needed to be addressed to comply with the TRRP rule. These deficiencies were communicated to Mr. Tommy Laman of Phoenix Metals and Ms. Susan Litherland of Weston during a meeting on November 28, 2000. The following summary outlines the deficiencies:

- 1) Complete additional assessment of "North Creek" to determine whether "North

REPLY TO: REGION 4 • 1101 E. ARKANSAS LANE • ARLINGTON, TEXAS 76010-6499 • 817/469-6750 • FAX 817/795-2519

P.O. Box 13087 • Austin, Texas 78711-3087 • 512/239-1000 • Internet address: [www.tnrcc.state.tx.us](http://www.tnrcc.state.tx.us)

printed on recycled paper using soy-based ink

Mr. Benjamin Smith  
May 22, 2001  
Page 2

Creek" represents valuable habitat for ecological receptors and is protective of downstream ecological receptors.

- 2) Complete additional offsite assessment along the east and west property lines to demonstrate that the chemicals of concern have been defined to the residential assessment levels.
- 3) Submit a report providing: a) the information on the assessment of the onsite and offsite affected environmental media, as per 30 TEX. ADMIN. CODE § 350.91; and b) if applicable, a reasoned justification demonstrating that "North Creek" does not represent valuable habitat for ecological receptors and is protective of downstream ecological receptors, or a Tier 2 or 3 ecological assessment.
- 4) Submit a Response Action Completion Report ("RACR") providing the information on: a) the completed response actions, as per 30 TEX. ADMIN. CODE § 350.95; and b) the post-response action care period, according to TEX. ADMIN. CODE §§ 350.94(k)(2) through (6).

Ferex (now Phoenix Metals) has failed to comply with the requirements of both the Texas Risk Reduction Rules and TRRP. Thus, McKinney Smelting, Inc. remains liable under the December 2, 1998 Agreed Order to remediate contamination at the Facility.

Within 30 days from the date of this letter, you must provide me with a written response of your plans to complete the corrective action demonstration for this Facility. Failure to timely and satisfactorily comply with all the requirements of this Agreed Order, will result in the removal of the deferral and imposition of the remaining penalty amount of one hundred five thousand dollars (\$105,000.00). If you have any questions, please contact me at (817) 588-5877.

Sincerely,



Elisa Roberts  
Attorney  
Litigation Division

cc: Mr. Samuel Barrett, Waste Program Manager, Arlington Regional Office, MC R-4  
TNRCC Central Records, Building D, Room 190, MC 199



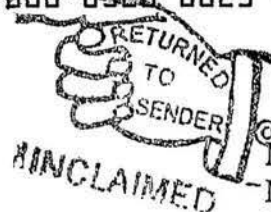
TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION  
Region 4  
1101 E. Arkansas Lane  
Arlington, Texas 76010-6499

RETURN SERVICE REQUESTED

**CERTIFIED MAIL**



7800 0520 0023 4087 6831



Mr. Benjamin Smith, President  
McKinney Smelting, Inc.  
300 N. McDonald  
P.O. Box 274  
McKinney, Texas 75069



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**JUN 18 2001**

**T.N.R.C.C.  
REGION 4**

Name *ASAP*  
1st *15-23*  
2nd *5-24*  
Retu *6-8*

73063-2313 01

# CERTIFIED MAIL RECEIPT CARD ("Green Card")

Division / Region:	OLS	Section:	Litigation
Record Series:	IHW	Acct/RN No.	No RN#
Secondary ID:	F0074/CO/19990816/Risk Assessment for PCB-Impacted Area		
Facility:	McKinney Metals, Inc. dba McKinney Metals Corp.		
Document Date:	08/16/1999	TCEQ Docket No.:	1997-0364-IHW-E
Regarding:	Risk Assessment for PCB-Impacted Area		

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to envelope to do not return here

Is your RETURN ADDRESS completed on the reverse side?	<b>SENDER:</b>		I also wish to receive the following services (for an extra fee):	
	<input type="checkbox"/> Complete items 1 and/or 2 for additional services. <input type="checkbox"/> Complete items 3, 4a, and 4b. <input type="checkbox"/> Print your name and address on the reverse of this form so that we can return this card to you. <input type="checkbox"/> Attach this form to the front of the mailpiece, or on the back if space does not permit. <input type="checkbox"/> Write "Return Receipt Requested" on the mailpiece below the article number. <input type="checkbox"/> The Return Receipt will show to whom the article was delivered and the date delivered.		1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery	
	3. Article Addressed to:		4a. Article Number	
	MR DAVID E WHITTEN ESQ ARTER & HADDEN LLP 1717 MAIN STREET STE 4100 DALLAS TX 75201-4605		Z 435 645 982	
	4b. Service Type		<input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
5. Received By: (Print Name)		7. Date of Delivery		Thank you for using Return Receipt Service.
6. Signature (Addressee or Agent)		8. Addressee's Address (Only if requested and fee is paid)		
PS Form 3811, December 1994		102595-99-B-0223 Domestic Return Receipt		

Barry R. McBee, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
John M. Baker, *Commissioner*  
Jeffrey A. Saitas, *Executive Director*



## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

*Protecting Texas by Reducing and Preventing Pollution*

August 16, 1999

Mr. David E. Whitten, Esq.  
Arter & Hadden, L.L.P.  
1717 Main Street, Suite 4100  
Dallas, Texas 75201-4605

**CERTIFIED MAIL #Z 435 645 982**  
**RETURN RECEIPT REQUESTED**

RE: Risk Assessment for PCB-Impacted Area  
Former McKinney Smelting Facility, McKinney, Texas  
Industrial Solid Waste Registration No. F0074

Dear Mr. Whitten:

The Texas Natural Resource Conservation Commission has reviewed the Risk Assessment for the PCB-Impacted Area at the former McKinney Smelting Facility in McKinney, Texas. This letter constitutes approval of the Risk Assessment report, with the following comments.

Exposure from the first water-bearing zone has been quantitatively excluded from the risk assessment based on analytical data indicating no current groundwater impact from the PCBs. However, the soil to groundwater pathway and the future use of the groundwater has been excluded based on qualitative field observations and intended land use. Therefore, please supply in future reports any quantitative information supporting the assumption of no cross-media contamination and no future use of the groundwater, and please plan to include a restriction of groundwater use in the deed recordation instrument.

Questions concerning the Risk Assessment review should be directed to Mr. Torin McCoy at (512) 239-1572, and questions concerning this letter should be directed to me at (512) 239-0701. Please use Mail Code 127 (MC-127) when responding to me by mail.

Sincerely,

A handwritten signature in cursive script that reads "Tammy Mitchell".

Tammy Mitchell, Project Manager  
Corrective Action Section  
Remediation Division

TM/tm

cc: Mr. Sam Barrett, Waste Program Manager, TNRCC Region 4 Office - Arlington



# CERTIFIED MAIL RECEIPT CARD ("Green Card")

Division / Region: OLS

Section:

Litigation

Record Series:

IHW

Acct/RN No.

No RN#

Secondary ID:

F0074/CO/19981228/Documents Unknown

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Facility:

McKinney Metals, Inc. dba McKinney Metals Corp.

TCEQ  
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Document Date:

12/28/1998

TCEQ Docket No.:

1997-0364-IHW-E

Regarding:

Documents Unknown

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97-0364-IHW-E

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I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

BENJIE SMITH PRESIDENT  
MCKINNEY SMELTING INC  
PO BOX 274  
MCKINNEY TX 75070

4a. Article Number

2 154 721 604

4b. Service Type

- |   |                                    |
|---|------------------------------------|
| <input type="checkbox"/> Registered                     | <input type="checkbox"/> Certified |
| <input type="checkbox"/> Express Mail                   | <input type="checkbox"/> Insured   |
| <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> COD       |

7. Date of Delivery

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

PS Form 3811, December 1994

102595-98-B-0229

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MC-105

Fold at line over top of envelope to  
the right of the return address

CERTIFIED

Z 154 721 604

MAIL



TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION  
P.O. Box 13087  
Austin, Texas 78711-3087

RETURN SERVICE REQUESTED

BENJIE SMITH PRESIDENT  
MCKINNEY SMELTING INC  
PO BOX 274  
MCKINNEY TX 75070

Name  
1st Notice 12-27  
2nd Notice 12-31  
Return 1-7

97-0364-ZHW-E

Is your RETURN ADDRESS completed on the reverse side?

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Consult postmaster for fee.

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BENJIE SMITH PRESIDENT  
MCKINNEY SMELTING INC  
PO BOX 274  
MCKINNEY TX 75070

4a. Article Number

Z 154 721 604

4b. Service Type

- ☐ Registered ☐ Certified
- ☐ Express Mail ☐ Insured
- ☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: (Print Name)

8. Addressee's Address (Only if requested  
and fee is paid)

6. Signature: (Addressee or Agent)

X

PS Form 3811, December 1994

102595-98-B-0229

Domestic Return Receipt

Thank you for using Return Receipt Service.

# CERTIFIED MAIL RECEIPT CARD ("Green Card")

Division / Region:	OLS	Section:	Litigation
Record Series:	IHW	Acct/RN No.	No RN#
Secondary ID:	F0074/CO/19981228/Documents Unknown		
Facility:	McKinney Metals, Inc. dba McKinney Metals Corp.		RECEIVED APR 02 2014 TCEQ CENTRAL FILE ROOM
Document Date:	12/28/1998	TCEQ Docket No.:	1997-0364-IHW-E

Regarding:

Documents Unknown

## Affix Acknowledgment Receipt ("Green Card") Here

603

97-0364-IHW-E

Is your RETURN ADDRESS completed on the reverse side? <b>SENDER:</b> ■ Complete items 1 and/or 2 for additional services. ■ Complete items 3, 4a, and 4b. ■ Print your name and address on the reverse of this form so that we can return this card to you. ■ Attach this form to the front of the mailpiece, or on the back if space does not permit. ■ Write "Return Receipt Requested" on the mailpiece below the article number. ■ The Return Receipt will show to whom the article was delivered and the date delivered.	I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.	
	3. Article Addressed to:  LARRY R BOYD ESQ ABERNATHY ROEDER ET AL PO BOX 1210 MCINNNEY TX 75069-1210	
	4a. Article Number 2154721603	
	4b. Service Type <input type="checkbox"/> Registered <input type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
	7. Date of Delivery 12 28 98	
5. Received By: (Print Name)  6. Signature: (Addressee or Agent) X B. Honken	8. Addressee's Address (Only if requested and fee is paid)	

PS Form 3811, December 1994

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Domestic Return Receipt

Thank you for using Return Receipt Service.

# CERTIFIED MAIL RECEIPT CARD ("Green Card")

Division / Region: OLS	Section: Litigation
Record Series: IHW	Acct/RN No. No RN#
Secondary ID: F0074/CO/19981222/Compliance Agreement	
Facility: McKinney Metals, Inc. dba McKinney Metals Corp.	
Document Date: 12/22/1998	TCEQ Docket No.: 1997-0364-IHW-E

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Regarding:

Compliance Agreement/No Green Card

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083

Z 435 649 083

US Postal Service

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Sent to
Street & Number
Post Office, State, & ZIP Code

TNRCC: MC 105  
 MCKINNEY SMELTING INC  
 DOCKET # : 1997-0364-IHW-E  
 PERMIT # : TNRCC ID F0074  
 ACCOUNT #: NONE  
 APPLICATION #: NONE

PS Form 3800, April 1995

Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
<b>TOTAL Postage &amp; Fees</b>	<b>\$</b>
Postmark or Date	

F6079

Barry R. McBee, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
John M. Baker, *Commissioner*  
Jeffrey A. Saitas, *Executive Director*



## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

*Protecting Texas by Reducing and Preventing Pollution*

December 22, 1998

### CERTIFIED MAIL

Benjie Smith, President  
McKinney Smelting, Inc.  
P.O. Box 274  
McKinney, Texas 75070

RE: MCKINNEY SMELTING, INC.  
TNRCC Docket No. 1997-0364-IHW-E; SOAH Docket No. 582-98-0610  
TNRCC ID No. F0074; Enforcement ID No. 10161  
Agreed Order assessing administrative penalties and requiring certain actions

An attachment to Attachment A, "Compliance Agreement between Ferex Corporation and the TNRCC" was inadvertently omitted from the order mailed to you December 14, 1998 regarding the above-referenced matter. Please find enclosed a complete copy of the order.

We apologize for any inconvenience this may have caused you. Should you have any questions, please contact Joel Reese of the Texas Natural Resource Conservation Commission's Office of the Chief Clerk (MC 105) at (512)239-1262.

Sincerely

  
LaDonna Castañuela  
Chief Clerk

LC/jr

Enclosure

cc: TNRCC Region 4  
Cecily Small Gooch, Staff Attorney, TNRCC Litigation Division (MC 175)  
Timothy Haas, Enforcement Coordinator, TNRCC Enforcement Division, Waste Section (MC 219)  
Larry R. Boyd, Esq., Abernathy, Roeder, Robertson, Boyd & Joplin, P.O. Box 1210, McKinney, Texas 75069-1210

# CERTIFIED MAIL RECEIPT CARD ("Green Card")

Division / Region:	OLS	Section:	Litigation
Record Series:	IHW	Acct/RN No.	No RN#
Secondary ID:	F0074/CO/19970703/Enforcement Action		
Facility:	McKinney Metals, Inc. dba McKinney Metals Corp.		
Document Date:	07/03/1999	TCEQ Docket No.:	1997-0364-IHW-E
Regarding:	Enforcement Action		

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APR 02 2014

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## Affix Acknowledgment Receipt (RPS) to Mailpiece

Is your RETURN ADDRESS completed on the reverse side?

### SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
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1. ☐ Addressee's Address
  2. ☐ Restricted Delivery
- Consult postmaster for fee.

### 3. Article Addressed to:

LARRY R. BOYD, ATTORNEY  
ABERNATHY, ROEDER, ROBERTSON, BOYD  
& JOPLIN, P.C.  
101 EAST DAVIS STREET  
MCKINNEY, TEXAS 75069-1210

### 4a. Article Number

P 092 733 288

### 4b. Service Type

- |  |   |
|--|---|
| <input type="checkbox"/> Registered                                | <input checked="" type="checkbox"/> Certified |
| <input type="checkbox"/> Express Mail                              | <input type="checkbox"/> Insured              |
| <input checked="" type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> COD                  |

### 7. Date of Delivery

7-7-99

### 5. Received By: (Print Name)

### 6. Signature: (Addressee or Agent)

X *Jenna Gilbert*

### 8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service



Barry R. McBee, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
John M. Baker, *Commissioner*  
Dan Pearson, *Executive Director*



## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

*Protecting Texas by Reducing and Preventing Pollution*

July 3, 1997

Larry R. Boyd, Attorney  
Abernathy, Roeder, Robertson, Boyd & Joplin, P.C.  
101 East Davis Street  
McKinney, Texas 75069-1210

Re: Enforcement Action Against McKinney Smelting, Inc., Formerly Known as McKinney Metals, Inc., d.b.a. McKinney Metals Corporation; SWR No. FOO74; TNRCC Docket No. 97-0364-IHW-E

Dear Mr. Boyd:

The purpose of this letter is to request financial documentation necessary to make a determination of the ability of the respondent, McKinney Smelting, Inc., Formerly Known as McKinney Metals, Inc., d.b.a. McKinney Metals Corporation ("McKinney"), to pay administrative penalties. The following information is required to perform our analysis, and without it we cannot make a recommendation as to McKinney's ability to pay penalties.

Please submit to this office the following information on the respondent **no later than July 18, 1997:**

- 1) Complete and return the enclosed disclosure form, IRS Form 8821;
- 2) Provide completed and signed corporate tax returns including all schedules for the last three filing years;
- 3) Provide financial statements prepared in accordance with generally accepted accounting principles for the last three years and current period including balance sheets, income statements, cash flow statements, and notes to the financial statements. Provide audited statements if they have been prepared;
- 4) Provide a written schedule detailing all presently outstanding loans including lender, origination date, origination amount, present balance, payment, terms of payment, interest rate, collateral, and payment status (Form enclosed). Enclose loan amortization schedules;
- 5) Provide a copy of the company's articles of incorporation and a statement of standing from the Texas Secretary of State;
- 6) Complete and return the attached "Disclosure Form - Corporate" (Form enclosed) **for each financial institution with which the company has an account or borrowing relationship;**
- 7) Provide a written schedule identifying senior company officers and each officer's total annual remuneration for the last three years;
- 8) Provide a written schedule identifying the shareholders of the company's voting stock. List the number of shares held, by shareholder, and the dollar value;
- 9) Provide a written schedule identifying any company that the subject corporation controls and any company that controls the subject corporation;

# CERTIFIED MAIL RECEIPT CARD ("Green Card")

Division / Region:	OLS	Section:	Litigation
Record Series:	IHW	Acct/RN No.	No RN#
Secondary ID:	F0074/CO/19970515/Notice of EDRP		
Facility:	McKinney Metals, Inc. dba McKinney Metals Corp.		
Document Date:	05/15/1997	TCEQ Docket No.:	1997-0364-IHW-E

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Regarding:

Notice of EDRP

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3. Article Addressed to:  Mr. Benjamin Lee Smith, Registered Agent of McKinney Smelting Inc. formerly known as McKinney Metals Inc. dba McKinney Metals P.O. Box 274 75070		4a. Article Number <b>Z 746034390</b>	
5. Received by (Print Name) 75070		4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
6. Signature: (Addressee or Agent) <i>[Signature]</i>		7. Date of Delivery JUN 12 1997	
8. Addressee's Address (Only if requested and fee is paid)		PS Form 3811, December 1994	

Thank you for using Return Receipt Service.

Domestic Return Receipt



Barry R. McBee, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
John M. Baker, *Commissioner*  
Dan Pearson, *Executive Director*



## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

*Protecting Texas by Reducing and Preventing Pollution*

7 15 11 3:43  
CHIEF CLERKS OFFICE

May 15, 1997

### CERTIFIED MAIL P092508774 - RETURN RECEIPT REQUESTED

Mr. Benjamin Lee Smith  
Registered Agent of  
McKinney Smelting, Inc. formerly known as  
McKinney Metals, Inc., d.b.a. McKinney Metals Corporation,  
300 N. McDonald  
McKinney, Texas 75069

Re: Notice of Executive Director's Preliminary Report and Petition for a Texas Natural Resource Conservation Commission Order Assessing Administrative Penalties and Requiring Certain Actions of McKinney Smelting, Inc., Formerly Known as McKinney Metals, Inc., d.b.a. McKinney Metals Corporation; SWR No. F0074; TNRCC Docket No. 97-0364-IHW-E

Dear Mr. Smith:

The Executive Director of the Texas Natural Resource Conservation Commission (the "Commission" or "TNRCC") by this letter hereby serves you with this Notice of the Executive Director's Preliminary Report for a Texas Natural Resource Conservation Commission Order Assessing Administrative Penalties and Requiring Certain Actions. You are hereby advised that the Executive Director has concluded that McKinney Smelting, Inc., formerly known as McKinney Metals, Inc., d.b.a. McKinney Metals Corporation ("McKinney") has committed violations of the Solid Waste Disposal Act, TEX. HEALTH AND SAFETY CODE ANN. Chapter 361 (Vernon 1992 and Supp. 1997) (the "Act"), the Texas Water Code, TEXAS WATER CODE ANN. Chapter 26 (Vernon 1988 and Supp. 1997) (the "Code"), and the rules of the Commission. Pursuant to this Report, the Executive Director petitions the Commission to assess administrative penalties under the authority of Section 361.252 of the Act and Section 26.136 of the Code against McKinney and to order McKinney to undertake certain actions necessary to bring the facility into compliance with the Act, the Code, and the rules of the Commission pursuant to Section 361.302 of the Act, Section 26.019 of the Code, and 30 Tex. Admin. Code Chapter 70.

The Executive Director's Preliminary Report in the matter of McKinney's violations, attached hereto and incorporated herein by reference, concludes that violations of 30 Tex. Admin. Code Section 335.4 and Section 26.121 of the Code have occurred and the Executive Director requests that an